IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.916 OF 2005

Nhava Sheva Port & General Workers Union ..Petitioner.
Vs.
The Director, Ornate Multi Modal Carriers
Private Limited & Ors. ..Respondents.

....

Mr.Rahul Thakur with Mr.Jaiprakash Sawant for the Petitioner.
Mr.A.Y.Sakhare with Mr.R.S.Datar for respondent No.1.
Smt.S.I.Shah for respondent No.2.
Mr.S.A.Bhalwal for respondent No. 3.
Smt.S.V.Bharucha for respondent Nos.4, 5 and 6.

CORAM : A.P.SHAH and
DR.D.Y.CHANDRACHUD, JJ.
21st July, 2005.

P.C.:

1. In these proceedings under Article 226 of the Constitution the relief which has been sought is the issuance of a Writ of Mandamus restraining Respondent Nos.2 to 6 from delivering possession of machinery and equipment of the First Respondent more particularly described in Exh.E to the Petition until the statutory dues of the members of the union are paid; a Writ of Mandamus directing the Second and Third Respondents as principal employers

to pay the statutory dues of the workers; an order of injunction restraining the First Respondent from taking possession of or disposing of the machinery or in the alternative, that an appropriate direction be issued to the Union of India to appoint a Presiding Officer of the Central Government Industrial Tribunal at Mumbai. The First Respondent before the Court is a private limited company registered under the Companies Act 1956. The Second and Third Respondents are respectively the Central Warehousing Corporation ('CWC') and Jawaharlal Nehru Port Trust ('JNPT' .) The Fourth and Fifth Respondents are the Union Ministries of Labour and Surface Transport, while the Sixth Respondent is the Union of India.

2. JNPT which is a major Port Trust had authorized CWC to perform certain activities mentioned in Section 42(1)(b) of the Major Port Trust Act, 1963. A licence was granted to CWC for the management, maintenance and operation of a Container Freight Station in 1989 and again in June 1999 for a period of five years. The claim of the Petitioner is that the Second Respondent had in turn

subcontracted certain work to the First Respondent with effect from 4th November, 1997. According to the Petitioner, the statutory dues of the workmen have not been paid by the First Respondent. On 14th October, 2004, the First Respondent is stated to have stopped all work and to have withdrawn therefrom. On 7th January, 2004, a reference was made by the Union Government for adjudication before the Central Government Industrial Tribunal of the following industrial dispute :

> "Whether any employer-employee relationship exists between the workmen employed for Container Freight Station operations in the Container Freight Station of Jawaharlal Nehru Port Trust through the intermediaries including the Central Warehousing Corporation (CWC) and M/s. Ornate Multi-Model Carriers Pvt.Ltd., Mumbai? Whether the demand for absorption of workmen employed for Container Freight Station Operation in direct services of JNPT is justified? If not what relief are the workmen concerned entitled to?"

3. The dispute is pending before the Industrial Tribunal. This Court was moved on the apprehension that the First Respondent

would remove the plant and machinery and that there was no judicial officer in the Central Government Industrial Tribunal who could be moved for appropriate relief in the meantime. The claim of the workers for unpaid dues is to the extent of Rs.2.15 Crores. During the course of these proceedings, by an order dated 13th July, 2005 the Registrar – General was directed to appoint an officer of this Court as Court Commissioner to inspect the site at the Container Freight Station where the machinery, equipment and vehicles of the First Respondent have been kept and to submit a report on whether adequate steps have been taken for the preservation of the aforesaid movables. The Court Commissioner in his report dated 19th July, 2005 has observed that having inspected all the machinery, equipment and vehicles, it was seen that the aforesaid movables have been kept in premises which are well guarded by security personnel. However, some of these items were found to be kept in the open and exposed to the elements. Certain movables were found to have been kept securely in a shed.

4. Since the Court is informed that the Central Government Industrial Tribunal is now functional, it is not necessary for the Court to adjudicate upon the merits of the rival contentions in these proceedings. The reference to adjudication is pending. In the circumstances, it would be open to the parties to apply for all appropriate reliefs before the Central Government Industrial Tribunal. On the request of the contesting parties, however, we direct that it would be appropriate if the machinery, equipment and vehicles are stored wherever possible in a shed or kept under appropriate tarpaulin cover wherever it is feasible to do so. It would be open to the parties to apply before the Industrial Tribunal for appropriate reliefs. This Petition is accordingly disposed of reserving liberty in the aforesaid terms. There shall be no order as to costs.